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DPD-2835-59

Letter Contract No. SP-1920

Lockheed Aircraft Corporation
Burbank, California

MAY 15 1950

Gentlemen:

1. Introduction

An order is hereby placed with the Contractor for the furnishing to the Government of the supplies or services set forth in Exhibit "A" attached hereto and hereby made a part hereof.

2. Direction to Proceed

Except as otherwise expressly provided to the contrary herein, the Contractor is directed, upon its acceptance of this order, to proceed immediately to procure the necessary materials, and to commence the manufacture of the supplies or performance of the services called for herein, and to pursue such work with all diligence to the end that the supplies may be delivered or services performed at the earliest practicable date.

3. Contract Clauses Incorporated by Reference:

(a) The provisions of the contract clauses set forth in the following paragraphs of the Armed Services Procurement Regulation in effect on the date hereof and the additional clauses which are made a part of this Letter Contract in Exhibit "A" are hereby incorporated into this Letter Contract by reference with the same force and effect as though herein set forth in full:

7-103.1 (Definitions); 7-103.2 (Changes); 7-103.3 (Extras); 7-103.4 (Variation in Quantity); 7-103.5 (Inspection); 7-103.6 (Responsibility for Supplies); 7-103.8 (Assignment of Claims); 7-103.9 (Additional Bond Security); 11-401 (Federal State and Local Taxes); 7-103.12 (Disputes); 7-103.14 (Buy American Act); 12-303.1 (Eight-Hour Law of 1912); 12-604 (Walsh-Healey Public Contracts Act); 12-802 (Nondiscrimination in Employment); 7-103.19 (Officials Not to Benefit); 7-103.20 (Covenant Against Contingent Fees); 7-104.10 (Aircraft in the open); 7-104.12 (Military Security Requirements); 7-104.14 (Utilization of Small Business Concerns); 7-104-15 (Examination Records); 7-104.16 (Gratuities); 12-203 (Convict Labor); 7-104 (Notice and Assistance Regarding Patent Infringement); 9-110 (Reporting of Royalties); 9-106 (Filing of Patent Applications); 9-102.1 (Authorization and Consent); 9-107.1 (Patent Rights); 9-202 (Copyright); 9-112 (Reproduction and Use of Technical Data); and 13-502 (Government Furnished Property).

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(b) Reference in any of the clauses enumerated in (a) above to contract prices or adjustments in contract prices and delivery schedules to the extent such are not specifically included in this Letter Contract, shall be inapplicable, except that any adjustments in amounts finally payable to the Contractor, or in time of performance required by such clauses, shall be made either at the time of settlement of Contractor's termination claims or shall be taken into account at the time of execution of the definitive contract contemplated herein.

4. Provision for Definitizing Contract:

By the Contractor's acceptance hereof, it undertakes, without delay, to enter into negotiations with the Government looking to the execution of a definitive contract which will include the clauses enumerated above and all other applicable clauses then required by Federal Law, Executive order, and applicable Procurement Regulations to be included in contracts for supplies or services of the kind herein described. The definitive contract will also contain a detailed delivery schedule and prices, terms and conditions as agreed to by the parties which may or may not be at variance with the provisions of this order. It is expected that such definitive contract will be executed prior to 1 June 1959 and will be a fixed-price type contract with provision for redetermination of price upward or downward.

5. Authority to Obligate Funds:

The maximum amount for which the Government shall be liable if this contract is terminated is \$600,000.00, and any expenditure or obligation by the Contractor in excess of that amount, in furtherance of performance hereunder, shall be at the Contractor's own risk.

6. Termination:

(a) In case a definitive contract is not executed by the date specified in the clause hereof entitled "Provision for Definitizing Contract," because of the inability of the parties to agree upon a definitive contract, this order may be terminated in its entirety by either party by delivering to the other party a notice in writing specifying the effective date of termination, which date shall not be earlier than thirty (30) days after receipt of such notice.

(b) The performance of work under this order may be terminated by the Government, in accordance with this clause, in whole, or from time to time in part, whenever the Contracting Officer shall determine that such termination is in the best interests of the Government. Any such termination shall be effected by delivery to the Contractor of a Notice of Termination specifying the extent to which performance of work under this order is terminated, and the date upon which such termination becomes effective.

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(c) After receipt of Notice of Termination, and except as otherwise directed by the Contracting Officer, the Contractor shall (1) stop work under this order on the date and to the extent specified in the Notice of Termination; (2) place no further orders or subcontracts for materials, services, or facilities except as may be necessary for completion of such portion of the work under this order as is not terminated; (3) terminate all orders and subcontracts to the extent that they relate to the performance of work terminated by the Notice of Termination; (4) assign to the Government, in the manner, at the times, and to the extent directed by the Contracting Officer, all of the right, title, and interest of the Contractor under the orders or subcontracts so terminated; (5) settle all outstanding liabilities and all claims arising out of such termination of orders and subcontracts with the approval or ratification of the Contracting Officer to the extent he may require, which approval or ratification shall be final for all purposes of this clause; (6) transfer title to and deliver to the Government, in the manner, at the times and to the extent, if any, directed by the Contracting Officer, (i) the fabricated or unfabricated parts, work in process, completed work, supplies, and other material produced as a part of, or acquired in respect of the performance of, the work terminated by the Notice of Termination, (ii) the completed or partially completed plans, drawings, information, and other property which, if this order had been completed, would be required to be furnished to the Government; (7) use its best efforts to sell in the manner, at the times, to the extent, and at the price or prices directed or authorized by the Contracting Officer, any property of the types referred to in provisions (6) of this paragraph: PROVIDED, HOWEVER, That the Contractor (i) shall not be required to extend credit to any purchaser, and (ii) may acquire any such property under the conditions prescribed by and at a price or prices approved by the Contracting Officer: AND PROVIDED FURTHER, That the proceeds of any such transfer or disposition shall be applied in reduction of any payments to be made by the Government to the Contractor under this order or shall otherwise be credited to the price or cost of work covered by this order or paid in such other manner as the Contracting Officer may direct; (8) complete performance of such part of the work as shall not have been terminated by the Notice of Termination; and (9) take such action as may be necessary or as the Contracting Officer may direct, for the protection and preservation of the property related to this order which is in the possession of the Contractor and in which the Government has or may acquire an interest. At any time after expiration of the plant clearance period, as defined in section VIII, Armed Services Procurement Regulation, or as it may be amended from time to time, the Contractor may submit to the Contracting Officer a list, certified as to quantity and quality, of any or all items of termination inventory not previously disposed of, exclusive of items the disposition of which has been directed or authorized by the Contracting Officer, and may request the Government to remove such items or enter into a storage agreement covering them. Not later than fifteen (15) days thereafter, the Government will accept title to such items and remove them or enter into a storage agreement covering the same: PROVIDED, That the list submitted shall be subject to verification by the Contracting Officer upon removal of the items, or if the items are stored, within forty-five (45) days from the date of submission of the list, and any necessary adjustments to correct the list as submitted shall be made prior to final settlement.

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(d) After receipt of a Notice of Termination, the Contractor shall submit to the Contracting Officer its termination claim in the form and with the certification prescribed by the Contracting Officer. Such claim shall be submitted promptly, but in no event later than 2 years from the effective date of termination, unless one or more extensions in writing are granted by the Contracting Officer upon request of the Contractor made in writing within such 2-year period or authorized extension thereof. However, if the Contracting Officer determines that the facts justify such action, he may receive and act upon any such termination claim at any time after such 2-year period or any extension thereof. Upon failure of the Contractor to submit a termination claim with the time allowed, the Contracting Officer may determine, on the basis of information available to him, the amount, if any, due the Contractor by reason of the termination, and shall thereupon pay to the Contractor the amount so determined.

(e) Subject to the provision of paragraph (d) hereof, the Contractor and the Contracting Officer may agree upon the whole or any part of the amount or amounts to be paid to the Contractor by reason of the total or partial termination of work pursuant to this clause. In the event of any termination pursuant to paragraph (a) hereof, such amount or amounts shall not include any allowance for profit or fee. In the event of any termination pursuant to paragraph (b) hereof, such amount or amounts may include a reasonable allowance for profit or fee, but only on work actually done in connection with the terminated portion of this order. Any such amount shall not exceed the amount set forth in the clause hereof entitled "Authority to Obligate Funds, and Subcontracts." Any such agreement shall be embodied in an amendment to this order and the Contractor shall be paid the agreed amount.

(f) If the Contractor and the Contracting Officer are not able to agree in whole or in part, as provided in paragraph (e) hereof, as to the amount or amounts to be paid to the Contractor in connection with the termination of work pursuant to this clause, the Government, without duplication of any amounts agreed upon in accordance with the above-cited paragraph (e), shall pay to the Contractor an amount determined in accordance with the applicable cost principles of the Armed Services Procurement Regulation. In the event of the termination of this order pursuant to paragraph (a) hereof, no allowance for fee or profit shall be included in the amount to be paid the Contractor.

(g) The Contractor shall have the right of appeal, under the clause entitled "Disputes" incorporated in this order by reference, from any determination made by the Contracting Officer under paragraph (d) or (f) above (including any dispute as to whether termination has in fact taken place pursuant to par.(a) hereof), except that if the Contractor has failed to submit a claim within the time provided in paragraph (d) hereof and has failed to request extension of such time, the Contractor shall have no such right of appeal. If any case where the Contracting Officer has made a determination of the amount due under paragraph (d) or (f) above, the Government shall pay to the Contractor the following:

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(i) if there is no right of appeal hereunder or if no timely appeal has been taken, the amount so determined by the Contracting Officer, or (ii) if an appeal has been taken, the amount finally determined on such appeal.

(h) In arriving at the amount due to the Contractor under this clause, there shall be deducted (1) all unliquidated advance or other unliquidated payments theretofore made to the Contractor, (2) any claim which the Government may have against the Contractor in connection with this contract, and (3) the agreed price for, or the proceeds of sale of, any materials, supplies, or other things acquired by the Contractor or sold pursuant to the provisions of this clause and not otherwise recovered by or credited to the Government.

(i) The Government may from time to time, under such terms and conditions as it may prescribe, make partial payments and payments on account against costs incurred by the Contractor in connection with the terminated portion of the contract whenever in the opinion of the contracting Officer the aggregate of such payments shall be within the amount to which the Contractor will be entitled hereunder. If the total of such payments is in excess of the amount finally agreed or determined to be due under this clause, such excess shall be payable by the Contractor to the Government upon demand together with interest computed at the rate of 6 percent per annum, for the period from the date such excess payment is received by the Contractor to the date on which such excess is repaid to the Government: PROVIDED, HOWEVER, That no interest shall be charged with respect to any such excess payment attributable to a reduction in the Contractor's claim by reason of retention or other disposition of termination inventory until 10 days after the date of such retention or disposition.

(j) Unless otherwise provided in this contract or by applicable statute, the Contractor, from the effective date of termination and for a period of 6 years after final settlement under this order, shall preserve and make available to the Government, at all reasonable times at the office of the Contractor without direct charge to the Government, all books, records, documents, and other evidence bearing on the cost and expenses under this order and relating to the work terminated, or, to the extent approved by the Contracting Officer, photographs, microphotographs, or other authentic reproductions thereof.

7. Subcontracts:

(a) No contract shall be made by the Contractor with any other party for furnishing any of the completed or substantially completed articles, spare parts or work, herein contracted for, without the written approval of the Contracting Officer as to sources.

(b) The Contractor shall give specific advance notification to the Contracting Officer of any proposed subcontract hereunder which (1) is on a cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract.

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(c) The Contractor shall not, without the prior written consent of the Contracting Officer, place any subcontract which (1) is on a cost or cost-plus-a-fixed-fee basis, or (2) is on a fixed-price basis exceeding in dollar amount either \$25,000 or five percent (5%) of the total amount of this contract, or (3) provides for the fabrication, purchase, rental, installation or other acquisition, of any item of industrial facilities, or of special tooling having a value in excess of \$1,000, or (4) is on a time-and-material or labor-hour basis. The Contracting Officer may, in his discretion, ratify in writing any such subcontract; such action shall constitute the consent of the Contracting Officer as required by this paragraph (c).

(d) The Contractor agrees that no subcontract placed under this contract shall provide for payment on a cost-plus-a-percentage-of-cost basis.

(e) The Contracting Officer may, in his discretion, specifically approve in writing any of the provisions of a subcontract. However, such approval or the consent of the Contracting Officer obtained as required by this clause shall not be construed to constitute a determination of the acceptability of the subcontract price, unless such approval specifically provides that it constitutes a determination of the acceptability of the subcontract price.

(f) The Contracting Officer may approve all or any part of the Contractor's purchasing system and from time to time rescind or reinstate such approval. Such approval shall be deemed to fulfill the requirements for obtaining the Contracting Officer's consent to subcontracts as prescribed in paragraph (c) above.

8. Alterations:

The following alterations of this Letter Contract have been made prior to the execution of this contract by the parties hereto:

In reference ASPR clause 7-104.15 (Examination of Records) delete "Comptroller General of the United States" and substitute in lieu thereof "Contracting Officer under this Contract."

9. Provisions for Execution:

The Contractor's acceptance of this order will be indicated by affixing its signature to the original and two copies thereof and returning the original and one executed copy to the Contracting Officer. The remaining copy shall be retained for your files. Such acceptance will constitute this order a contract on the terms set forth herein.

THE UNITED STATES OF AMERICA

ACCEPTED May 22, 1959
LOCKHEED AIRCRAFT CORPORATION

BY Clarence L. Johnson
TITLE Vice President

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Contracting Officer

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EXHIBIT "A"

1. Contractor shall furnish the supplies and services as set forth below:

Item 1. Contractor shall IRAN and install Government owned J-75-P2 engines in four (4) Government owned U-2 aircraft. The Contractor shall perform the necessary ground and flight tests.

Item 2. Spares and ground handling equipment as required for early operation.

2. Estimated Delivery Schedule:

<u>Aircraft</u>	<u>Begin Modification</u>	<u>Begin Flight Test</u>	<u>Deliver to Field</u>
342	15 Feb 59	18 May 59	30 Aug 59
358	22 Mar 59	7 Jun 59	6 Jul 59
360	1 Jun 59	27 Jul 59	15 Aug 59
351	1 Jun 59	3 Aug 59	15 Aug 59

3. Progress Payments:

a. Progress payments, which are hereby defined as payments prior to acceptance on work in progress for the Government under this contract, may be made upon the following terms and conditions.

b. The Contracting Officer may, from time to time, authorize progress payments to the Contractor upon property acquired or produced and services performed by it for the performance of this contract: PROVIDED, that such progress payments shall not exceed 90 percent of the cost to the Contractor of the property and services upon which payment is made, which costs shall be determined from evidence submitted by the Contractor and which must be such as is satisfactory to the Contracting Officer as being representative of the value of the work already performed: PROVIDED FURTHER, that in no event shall the total of unliquidated progress payments (see (e) below) and of unliquidated advance payments, if any, made under this contract, exceed 80 per cent of the total contract price of supplies or services still to be delivered.

c. Upon the making of any progress payments under this contract, title to all parts, materials, inventories, work in process and nondurable tools theretofore acquired or produced by the Contractor for the performance of this contract, and properly chargeable thereto under sound accounting practice, shall forthwith vest in the Government; and title to all like

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property thereafter acquired or produced by the Contractor for the performance of this contract and properly chargeable thereto as aforesaid shall vest in the Government forthwith upon said acquisition or production: PROVIDED, that nothing herein shall deprive the Contractor of any further progress or final payments due or to become due hereunder; or relieve the Contractor or the Government of any of their respective rights or obligations under this contract.

d. The Contractor represents and warrants that the property, upon which any progress payment is made hereunder, shall be cleared of all liens and encumbrances of any kind whatsoever upon receipt of any progress payments.

e. In making payment for the supplies furnished hereunder, there shall be deducted from the contract price therefor a proportionate amount of the progress payments theretofore made to the Contractor, under the authority herein contained.

f. It is recognized that property (including, without limitation completed supplies, spare parts, drawings, information, partially completed supplies, work in process, materials, fabricated parts and other things (called for herein) title to which is or may hereafter become vested in the Government pursuant to this Clause will from time to time be used by or put in the care, custody or possession of the Contractor in connection with the performance of this contract. The Contractor, either before or after receipt of Notice of Termination at the option of the Government, may acquire or dispose of property to which title is vested in the Government under this clause, upon terms approved by the Contracting Officer; PROVIDED, that after receipt of Notice of Termination any such property that is a part of termination inventory may be acquired or disposed of only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. The agreed price (in case of acquisition by the Contractor) or the proceeds received by the Contractor (in case of any other disposition), shall, to the extent that such price and proceeds do not exceed the unliquidated balance of progress payments hereunder, be paid or credited to the Government as the Contracting Officer shall direct; and such unliquidated balance shall be reduced accordingly. Current production scrap may be sold by the Contractor without approval of the Contracting Officer but the proceeds will be applied as provided in this paragraph (f), provided that any such scrap which is a part of termination inventory may be sold only in accordance with the provisions of the termination clause of this contract and applicable laws and regulations. Upon liquidation of all progress payments hereunder or upon completion of deliveries called for by this contract, title to all property (or the proceeds thereof) which had not been delivered to and accepted by the Government under this contract or which has not been incorporated in supplies delivered to and accepted by the Government under this contract and to which title has vested in the Government under this clause shall vest in the Contractor.

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g. The provisions of this contract referring to "Liability for Government-furnished Property" and any other provisions of this contract defining liability for Government-furnished property shall be inapplicable to property to which the Government shall have acquired title solely by virtue of the provisions of this Clause. The provisions of this Clause shall not relieve the Contractor from risk of loss or destruction of or damage to property to which title vests in the Government under the provisions hereof.

h. If this contract (as heretofore or hereafter supplemented or amended) contains provisions for Advance Payment, and in addition if at the time any progress payment is to be made to the Contractor under the provisions of this progress payments clause any unliquidated balance of advance payments is outstanding, then notwithstanding any other provision of the Advance Payments Clause of this contract the net amount, after appropriate deduction for liquidation of the advance payment of such progress payment shall be deposited in the special bank account or accounts maintained as required by the provisions of the Advance Payments Clause, and shall thereafter be withdrawn only pursuant to such provisions.

4. Waiver of Requirements of General Provisions.

Notwithstanding the requirements of any of the General Provisions of this contract to the contrary, whensoever the Contractor, in performance of the work under this contract, shall find that the requirements of any of the clauses of the General Provisions are in conflict with security instructions issued to the Contractor by the Contracting Officer or by his duly authorized representative for security matters, the Contractor shall call the attention of the Contracting Officer to such conflict and the Contracting Officer or his duly authorized representative for security matters shall (i) modify or rescind such security requirements or (ii) the Contracting Officer shall issue to the Contractor a waiver of compliance with the requirements of the General Provisions conflicting with such security requirements. Any waiver of compliance with the General Provisions of this contract issued by the Contracting Officer shall be in writing, except that the approval by the Contracting Officer of any subcontract issued hereunder by the Contractor shall be deemed to constitute approval of waiver of any clauses of the General Provisions in conflict with the stipulations of such subcontract.

5. Special Security Restrictions.

The Contractor shall not reveal (i) the specific nature or any details of the work being performed hereunder or (ii) any information whatsoever with respect to the department of the Government sponsoring this contract and work thereunder except as the Contractor is directed or permitted to reveal such information by the Contracting Officer or by his duly authorized representative for security matters, and notwithstanding any clause or section of this contract to the contrary, the Contractor shall not interpret any clause or section of this contract as requiring or

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permitting divulgence of such information to any person, public or private, or to any officer or department of the Government without the express consent of the Contracting Officer or his duly authorized representative for security matters.

6. In addition to the alterations of the Letter Contract set forth in paragraph 8 thereof, the following are additional alterations thereto:

a. In referenced ASPR Clause 7-103.2 (Changes) substitute "90 days" in lieu of "30 days."

b. Delete referenced ASPR Clause 7-103.8 (Assignment of Claims) in its entirety and substitute in lieu thereof the following:

"Assignment of Claims:"

No assignment of claims shall be made under this contract without the written approval of the Contracting Officer under this contract.

c. In referenced ASPR Clause 9-105 (Patent Indemnity) add the following sentence:

"The foregoing is applicable only to items or parts which are standard commercial supplies."

d. In referenced ASPR Clause 13-502 (Government-Furnished Property) add the following sub-clauses:

"(j) Where the words "managers, superintendents or other equivalent representatives" are used or referred to, they shall be construed for the purpose of this clause as meaning "manufacturing managers, plant managers, production managers, work managers, division superintendents, or other equivalent representatives."

e. The provision of this Clause shall apply to all supplies accepted and delivered but left in the possession of the Contractor for modification, testing, or any other reason or purpose in connection with this contract.